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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,136	01/10/2006	Brian Hartley	SWIN 3380	9434
7812	7590	11/25/2008	EXAMINER	
SMITH-HILL AND BEDELL, P.C.			WALTERS, JOHN DANIEL	
16100 NW CORNELL ROAD, SUITE 220			ART UNIT	PAPER NUMBER
BEAVERTON, OR 97006			3618	
MAIL DATE		DELIVERY MODE		
11/25/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/561,136	HARTLEY, BRIAN
	<b>Examiner</b>	Art Unit JOHN D. WALTERS 3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 19 August 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 52-74 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 52-74 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 19 August 2008 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-166/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

#### **DETAILED ACTION**

Claims 52 - 74 have been examined. Claims 1 - 51 have been canceled by Applicant.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 60 - 62 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 60 recites the limitation “the mechanical advantage between the sprocket and the drive cog may be altered by a user.” The mechanical advantage between two cogs relies upon the number of teeth upon each cog. There is no mechanism disclosed which would allow a user to alter the number of teeth on either cog. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 52 - 60 and 64 - 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simons et al. (6,745,859) in view of Yuki et al. (6,065,555). Simons discloses a powered wheel assembly comprising:

- a support frame (Fig. 2, item 33);
- a container (Fig. 2, item 12);
- a wheel (Fig. 2, item 26);
- a plurality of engines having different power outputs (column 6, lines 6 - 11);
- an engine mounting for detachable attachment (Fig. 2);
- a mechanical coupling to drive said wheel which provides a mechanical advantage determined by a user (Fig. 3, item 45);
- a switch being a hold to sustain type (Fig. 2, item 66);
- a drive coupling to allow said wheel to freely rotate when not driven (column 7, lines 38 and 39);
- said mechanical coupling including a chain or belt (Fig. 2, item 41);
- said wheel including a sprocket cog (Fig. 5, item 37);
- a drive cog sized to provide mechanical advantage to enable said wheel to be driven (Fig. 6, item 60);
- said mechanical advantage between said sprocket cog and said drive cog may be altered by a user (column 8, lines 1 - 4);
- said drive mechanism able to be retrofitted to a wheelbarrow (column 2, lines 39 - 41).

Simons does not make use of an electric motor as a prime mover. Yuki, however, discloses a power assisted wheelbarrow comprising:

- an electric motor (Fig. 1, item 30);
- said electric motor being controlled by a status sensor, said sensor sensing a travel angle (column 2, lines 1 – 31);
- a battery (Fig. 1, item 29).

It would have been obvious to one of ordinary skill in the art at the time the instant invention was made to combine the power assisted wheelbarrow of Simons with the electric motor of Yuki in order to improve environmental costs associated with operation of said wheelbarrow. An electric motor would eliminate exhaust associated with an internal combustion engine as well as potential oil and fuel spills which could occur.

Claims 61 - 63 and 72 - 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simons et al. (6,745,859) in view of Yuki et al. (6,065,555) as applied to claims 52 - 60 and 64 - 71 above, and further in view of Husted et al. (2001/0013437). Simons in view of Yuki does not disclose the particulars of battery construction. Husted, however, discloses a removable battery comprising:

- a detachable electric battery (Fig. 2);
- said battery being held within a waterproof housing (Fig. 2, item 14);
- said battery including a plug (Fig. 2, item 16).

In regards to claims 62 and 72, it is old and well known to make use of rechargeable batteries in a wide range of electric vehicles including automobiles, go-

carts and scooters. As such it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to provide rechargeable batteries for the wheelbarrow of Simons in view of Yuki in order to eliminate the need for constant disposal of used batteries and the costs associated therewith.

It would have been obvious to one of ordinary skill in the art at the time the instant invention was made to combine the removable battery of Husted with the wheelbarrow of Simons in view of Yuki in order to facilitate transport of said wheelbarrow when not in use (Husted paragraph 7).

#### ***Response to Arguments***

Applicant's arguments with respect to claims 28 - 51 have been considered but are moot in view of the new ground(s) of rejection, made necessary by Applicant's amendment.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Schaefer, III (D461,613) discloses a wheelbarrow with selective auxiliary electric power assist;
- Lucchi (2,253,288) discloses a wheelbarrow;
- Armstrong (5,305,843) discloses a power driven wheelbarrow;
- Hoover (5,465,801) discloses a motorized wheelbarrow;

- Hillbohm (5,489,000) discloses a motorized wheelbarrow;
- Fox (5,878,827) discloses a motorized wheelbarrow;
- Simmons et al. (6,745,859) disclose a powered wheel assembly;
- Chernoff et al. (6,923,282) disclose a chassis subassembly module and method for using same;
- Benton et al. (7,234,710) disclose a spring powered vehicle;
- Brabetz et al. (2002/0084119) disclose a motorized wheelbarrow;
- Strong (2002/0175007) discloses a modular mobility vehicle;
- Hart (2003/0178801) discloses a motorized wheelbarrow with handle elevating feature.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN D. WALTERS whose telephone number is (571)272-8269. The examiner can normally be reached on Monday - Friday, 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher P Ellis/  
Supervisory Patent Examiner, Art Unit 3618

John D. Walters  
Examiner  
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/J. D. W./  
Examiner, Art Unit 3618